

RESOLUTION NO. CR-03-07

A RESOLUTION TO AUTHORIZE THE CITY ADMINISTRATOR TO ENTER INTO A CONSERVATION EASEMENT AGREEMENT WITH FEDEX GROUND PACKAGING SYSTEM, INC.

WHEREAS, as part of the Meijer Store development, located on State Route 665, an agreement has been reached to establish a Conservation Easement between the City and those related properties; and

WHEREAS, the City is interested in the maintenance and conservation of the streams located within the city limits; and

WHEREAS, the attached Agreement outlines the responsibilities and meets those maintenance and conservation needs.

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GROVE CITY, STATE OF OHIO, THAT:

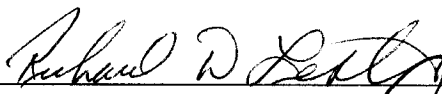
SECTION 1. The City Administrator is hereby authorized to enter into a Conservation Easement Agreement with FedEx Ground Packaging System, Inc., as attached hereto as Exhibit "A".

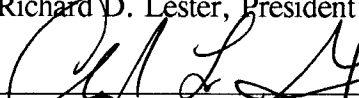
SECTION 2. This resolution shall take effect at the earliest opportunity allowed by law.

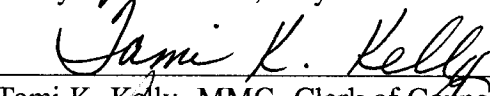
Passed: 01-16-07
Effective: 01-16-07

I Certify that this resolution
is correct as to form.

Attest:


Richard D. Lester, President of Council


Cheryl L. Grossman, Mayor


Tami K. Kelly, MMC, Clerk of Council

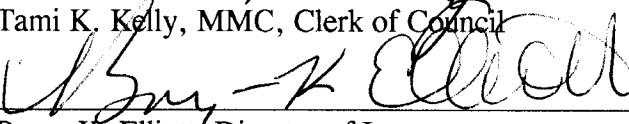

Bryan K. Elliott, Director of Law

EXHIBIT "A"
CR-03-07

AGREEMENT FOR CONSERVATION EASEMENT
(O.R.C. §5301.67 et seq.)

This AGREEMENT is made and entered into as of the 29th day of September, 2006, by and between **FedEx Ground Packaging System, Inc.**, a Delaware corporation (hereinafter "Grantor"), and the **City of Grove City, Ohio** (hereinafter "Grantee").

WITNESSETH

WHEREAS, Grantor is the owner of approximately 26.225 acres of land located near the southeast corner of the intersection of South Meadows Drive and London Groveport Road, in the City of Grove City, Franklin County, Ohio, with the prior deed reference being Official Record Volume 200409200218323, Franklin County Records. Grantor is also the owner of approximately 73 acres of land located immediately west and adjacent to its 26.255 acre parcel. The prior deed reference for such parcel, originally in the name of Services Development Corporation, is Official Record Volume 11996C14, Franklin County Records. Said parcels, collectively, are the "Grantor Parcels."

WHEREAS, Meijer Stores Limited Partnership ("Meijer") purchased approximately 34 acres of land located immediately adjacent to and east of the Grantor Parcels (the "Meijer Property");

WHEREAS, in connection with Meijer's development of the Meijer Property, Meijer obtained from Grantor the right to fill 376 linear feet of an existing stream on the Grantor Parcels and replace it with a relocated, enhanced stream on the Grantor Parcels ("Relocated Stream") in accordance with Meijer's April 28, 2005 Application for Clean Water Act Section 404 Authorization and Section 401 Water Quality Certification;

WHEREAS, the Relocated Stream is further identified on **Exhibit A** and **Exhibit B** as being that portion of the stream located within the "Proposed Drainage and Conservation Easement," which Easement is contained within the real property legally described in **Exhibit C** and **Exhibit D**;

WHEREAS, the Relocated Stream is well suited for protection as a Riparian Corridor, and therefore, possesses natural value (hereinafter collectively referred to as "conservation values") of great importance to Grantor, Grantee, and the general public;

WHEREAS, Grantor desires to convey to Grantee a perpetual easement for the purpose of protecting the Relocated Stream in its natural habitat condition, and to prevent any use of the same that will significantly impair or interfere with the conservation values of the Relocated Stream; and

WHEREAS, Grantee is a political subdivision of the State of Ohio and is thus qualified to acquire a conservation easement pursuant to Section 5301.69(A) of the Ohio Revised Code.

NOW THEREFORE, for valuable consideration and pursuant to O.R.C. §5301.67 et seq., the parties agree as follows:

1. Grantor grants to Grantee a perpetual conservation easement with respect to the Relocated Stream (the "Easement Area") for the purpose of protecting the Easement Area in its natural habitat condition, and to prevent any use of the same that will significantly impair or interfere with the conservation values of the Easement Area. Grantor intends that this Easement will confine the use of the Easement Area to activities that enhance the riparian corridor within the Relocated Stream.

2. Grantor agrees to limit the use of the Easement Area to activities or uses that are consistent with the purpose of this Easement. Any activity on the Easement Area inconsistent with the purpose of this Easement is prohibited, except the right to (a) remove trees or other natural debris that fall into or build up in the Relocated Stream and create an obstruction to the free flow of the water; and (b) maintain all existing and new private roads, bridges, trails, structures and other improvements lawfully erected on the Grantor Parcels, including such improvements to be constructed and located within the Easement Area pursuant to Grantee's Development Plan approved by the City Council of Grove City, Ohio, effective October 17, 2005, in Resolution No. CR-82-05 to Approve Development Plan for FedEx Ground located at 6120 South Meadows Drive, Grove City, Ohio 43123, as the same may be amended.

3. Except for the specific permissive uses outlined above, and subject to the limitations described above, the vegetation or hydrology of the Easement Area will not be altered in any substantial way or by any means or activity, including:

- a) haying, mowing or seed harvesting for any reason;
- b) altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting or otherwise destroying the vegetative cover;
- c) dumping refuse, wastes, sewage or other debris;
- d) harvesting wood products;
- e) drainage, dredging, channeling, filling, leveling, diking, impounding or related activities, as well as altering or tampering with water control structures or devices;
- f) diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means;
- g) building or placing buildings or structures on the easement area;
- h) planting or harvesting any crop; and
- i) grazing or allowing livestock on the easement area.

4. To accomplish the purpose of this Easement, Grantor conveys to Grantee the right (a) to enter upon the Easement Area at reasonable times in order to monitor Grantor's compliance with, and otherwise enforce the terms of this Easement, provided that such entry shall be upon prior reasonable notice to Grantor; (b) to prevent any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement; and (c) to require the restoration of such areas or features of the Easement Area that may be damaged, except with respect to damage caused by fire, flood, storm, earth movements, or acts beyond Grantor's control. Grantee reserves the right to post or clearly mark the boundaries of the Easement Area at mutually agreed upon points.

5. Grantor reserves all other rights accruing from the ownership of the Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not inconsistent with the purpose of this Easement. Grantor further reserves the right to (a) maintain all existing structures and use the Easement Area including, without limitation, existing utility easements located on the Easement Area; and (b) to engage in the activities set forth in Section 2 herein. This Easement shall not be construed as a dedication of the Easement Area for public use, nor is Grantee authorized by this Easement to allow access by the general public to any portion of the Easement Area or make any use of the Easement Area except as provided herein.

6. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation; and where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purposes of this Easement, to restore the portion of the Easement Area, so injured, to its prior condition in accordance with a plan approved by Grantee.

7. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation and maintenance of the Easement Area, but reserves the right to seek contribution, indemnification and any other form of payment from any third party for such liabilities. By accepting this Easement, Grantee does not assume any obligations with respect to the ownership, operation or maintenance of the Easement Area.

8. This grant of easement shall run with the land and be binding on and inure to the benefit of the parties, their heirs, executors, administrators, successors and assigns. Grantee may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under O.R.C. §5301.67 et seq.

9. **Notices.** Any notice desired or required to be given to Grantor under this Easement shall be sent postage prepaid, registered or certified mail, return receipt requested, to the following address:

Fedex Ground Package System, Inc.
Services Development Corporation
1000 Fedex Drive
Moon Township, Pennsylvania 15108
Attention: Managing Director – Real Estate

Any notice desired or required to be given to Grantee under this Easement shall be sent postage prepaid, registered or certified mail, return receipt requested, to the following address:

City of Grove City, Ohio
4035 Broadway
Grove City, Ohio 43123
Attention: Director of Development

STATE OF OHIO)
) ss
COUNTY OF FRANKLIN)

Before me, a notary public, in and for said County and State, personally appeared the above named _____, the _____ of the City of Grove City, Ohio, a municipal corporation, who acknowledged that he did sign the foregoing instrument on behalf of said corporation and that the same is his free act and deed, and the free act and deed of _____.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of September, 2006.

Notary Public, State of _____
County of _____
My commission expires _____
Acting in the County of _____

DRAFTED BY AND
WHEN RECORDED RETURN TO:

Lisa V. Fraser, Esq.
Meijer Stores Limited Partnership
2929 Walker Avenue, N.W.
Grand Rapids, MI 49544
(616)791-5547

EXHIBIT A
TO
CONSERVATION EASEMENT

(Drawing of Relocated Stream Easement Area on 26.225 acre parcel)

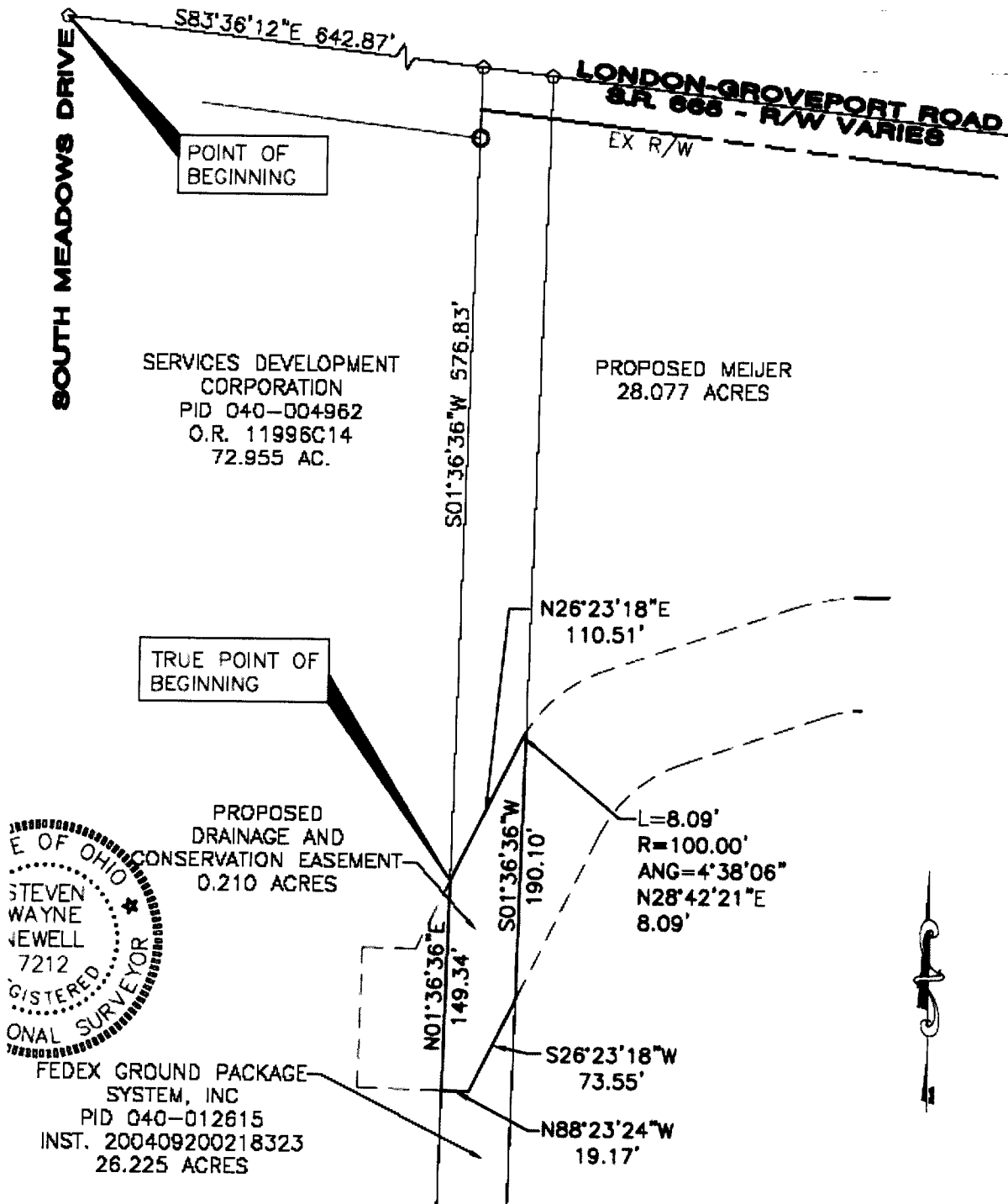
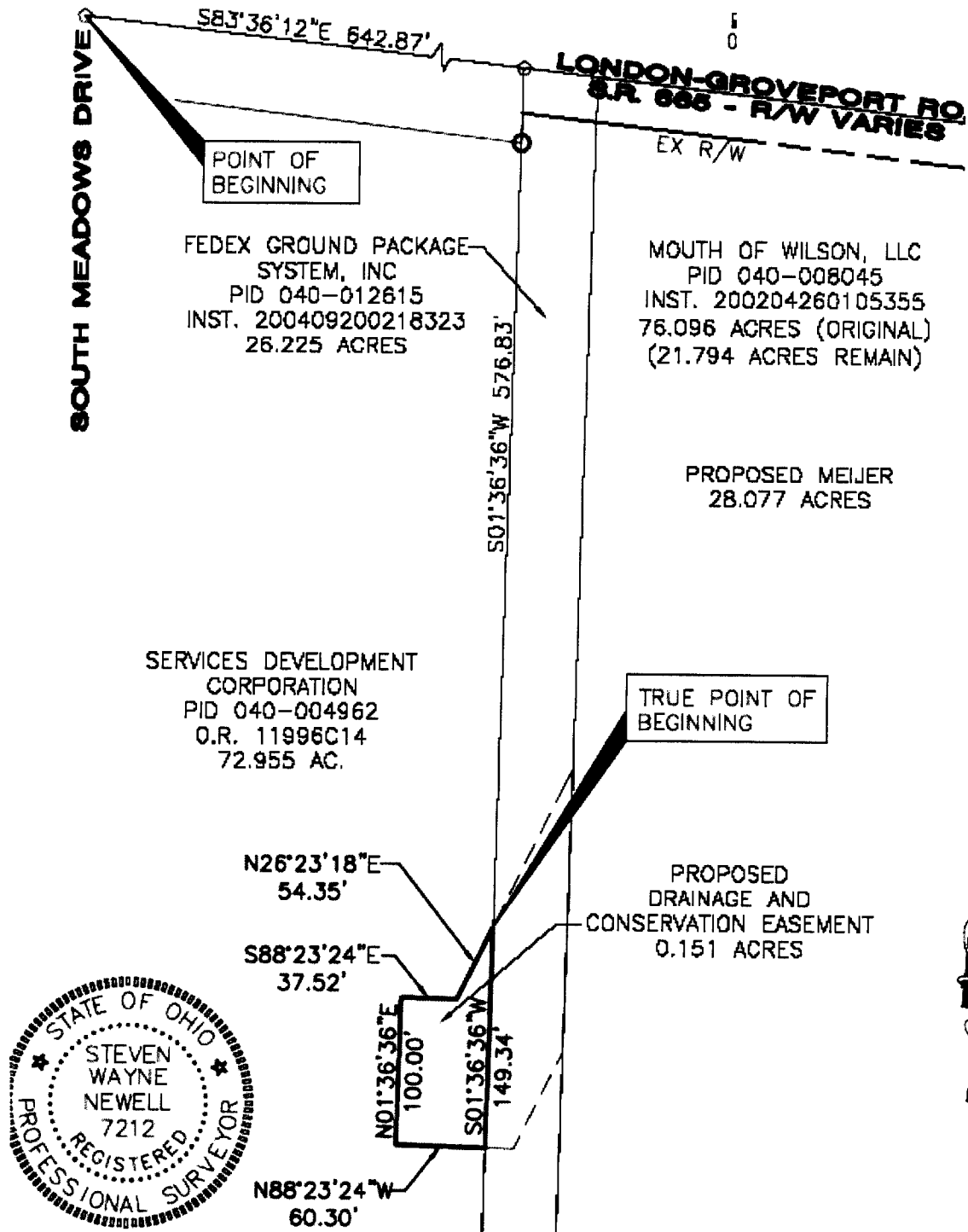


EXHIBIT B
TO
CONSERVATION EASEMENT

(Drawing of Relocated Stream Easement Area on 72.955 acre parcel)



**EXHIBIT C
TO
CONSERVATION EASEMENT**

(Legal Description of Stream Relocation Easement Area on 26.225 acre parcel)

Situate in Virginia Military Survey No. 6115 City of Grove City, County of Franklin, State of Ohio, and being an easement over a 26.225 acre tract of land as conveyed to Fedex Ground Package System, Inc. by deed recorded in Inst No. 200409200218323 (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Franklin County Records Office, unless noted otherwise) and described as follows:

Commencing for reference at northwest corner of said 26.225 acre tract;

thence along the west line of said 26.225 acre tract South one degree thirty-six minutes thirty-six seconds West (S01°36'36"W) for five hundred seventy-six and 83/100 feet (576.83') to the **TRUE POINT OF BEGINNING** of the herein described easement;

thence leaving said west line North twenty-six degrees twenty-three minutes eighteen seconds East (N26°23'18"E) for one hundred ten and 51/100 feet (110.51') to a point;

thence on a curve to the right with a radius of one hundred and 00/100 feet (100.00') for an arc distance of eight and 09/100 feet (8.09'), [chord bearing North twenty-eight degrees forty-two minutes twenty-one seconds East (N28°42'21"E) for eight and 09/100 feet (8.09'), delta angle of said curve being four degrees thirty-eight minutes six seconds (4°38'06")] to a point on an east line of said 26.225 acre tract;

thence along said east line South one degree thirty-six minutes thirty-six seconds West (S01°36'36"W) for one hundred ninety and 10/100 feet (190.10') to a point;

thence leaving said east line South twenty-six degrees twenty-three minutes eighteen seconds West (S26°23'18"W) for seventy-three and 55/100 feet (73.55') to a point;

thence North eighty-eight degrees twenty-three minutes twenty-four seconds West (N88°23'24"W) for nineteen and 17/100 feet (19.17') to a point on said west line;

thence along said west line North one degree thirty-six minutes thirty-six seconds East (N01°36'36"E) for one hundred forty-nine and 34/100 feet (149.34') to the **TRUE POINT OF BEGINNING**.

**EXHIBIT D
TO
CONSERVATION EASEMENT**

(Legal Description of Stream Relocation Easement Area on 72.995 acre parcel)

Situate in Virginia Military Survey No. 6115 City of Grove City, County of Franklin, State of Ohio, and being an easement over a 72.955 acre tract of land as conveyed to Services Development Corporation by deed recorded in O.R 11996 C14 (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Franklin County Records Office, unless noted otherwise) and described as follows:

Commencing for reference at northeast corner of said 72.955 acre tract;

thence along the east line of said 72.955 acre tract South one degree thirty-six minutes thirty-six seconds West (S01°36'36"W) for five hundred seventy-six and 83/100 feet (576.83') to the **TRUE POINT OF BEGINNING** of the herein described easement;

thence continuing along said east line South one degree thirty-six minutes thirty-six seconds West (S01°36'36"W) for one hundred forty-nine and 34/100 feet (149.34') to a point;

thence leaving said east line North eighty-eight degrees twenty-three minutes twenty-four seconds West (N88°23'24"W) for sixty and 30/100 feet (60.30') to a point;

thence North one degree thirty-six minutes thirty-six seconds East (N01°36'36"E) for one hundred and 00/100 feet (100.00') to a point;

thence South eighty-eight degrees twenty-three minutes twenty-four seconds East (S88°23'24"E) for thirty-seven and 52/100 feet (37.52') to a point;

thence North twenty-six degrees twenty-three minutes eighteen seconds East (N26°23'18"E) for fifty-four and 35/100 feet (54.35') to the **TRUE POINT OF BEGINNING**.